IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWELFTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

**THE HON'BLE Mr. JUSTICE C.V.RAMULU**

**WRIT PETITION No.12785 of 1995**

Between:

Yellamilli Appa Rao S/o.Ramana
Z.P.Elementary School, Street Indrapalem, Kakinada Mandal
E.G.District

**..... PETITIONER**

AND

1 The Presiding Officer, Labour Court,
Visakhapatnam District.
2 The Principal and Chief Warden, Rangaraya Medical College,
Kakinada, E.G.District
3 The Warden, Men's Hostel,
Rangaraya Medical College, Kakinada, E.G. District.

**.....RESPONDENTS**

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the nature of writ of mandamus to call for the records relating to the ID.No.243/90 Dt.19/7/1994 passed by the 1st respondent and declaring that the award passed by the 1st respondent court in ID.No.243/90, Dt.19/7/1994 as illegal, arbitrary and violative of the principles of natural justice and further direct the 2nd and 3rd respondents to reinstate the petitioner with continuity of service and full back wages from the date of termination till the date of reinstatement.

**Counsel for the Petitioner: Mr. P.RAGHAVENDER REDDY**

**Counsel for Respondent No.1: GP FOR LABOUR**

**Counsel for Respondents 2 & 3: Mr. D.V. SITARAM MURTHY**

**The Court made the following :**

**JUDGMENT:**

This writ petition is filed challenging the Award passed by the Labour Court, Visakhapatnam in I.D.No.243 of 1990, dated 19-7-1994 wherein the claim petition filed by the writ petitioner/workman under Section 10 of the Industrial Disputes Act,1947 (for short 'the Act') was dismissed.

It is the case of the petitioner that he was appointed as a Peon in the Rangaraya Medical College Men's Hostel at Kakinada. He had put in more than 21 years of unblemished service. While so, he fell sick and applied for leave originally for three days and after completion of the leave period, he joined duty. He fell sick again and applied leave for another three days. With great difficulty, he could resume duty and worked for two months. Thereupon, unfortunately, he fell sick again and could not attend to his duties; therefore, applied leave for three months on health grounds and he was under the treatment of Dr.M.Chandramouleswara Reddy, MBBS, DV, MIPHA, FAIMS and thereupon he could not attend to his duties and applied for another three months leave. The Warden, who was very much upset with his Union activities, since he established Hostel Employees' Union, started harassing him and sent Memos dated 28-10-1988 and 12-11-1988 stating that his services are no more required and resolved to remove him from service as per the Executive Committee Resolutions dated 6-10-1988 and 21-10-1988. Thereupon, on asking to explain, he submitted an explanation dated 16-11-1988 stating that only on account of his ill-health, he applied for leave; whereas, his services were terminated orally without assigning any reasons with effect from 28-10-1988. Questioning the same, he raised an industrial dispute. The same was referred to the Labour Court, Visakhapatnam under Section 10 of the Act.

In the claim statement before the Labour Court, the petitioner stated that the termination of the petitioner was in utter violation of principles of natural justice and also statutory provisions under the Act, particularly Section 25-F thereof, since no notice was given or notice pay was paid before terminating his service. However, the Labour Court dismissed the same holding that the I.D. was premature, since there was no termination order passed by the respondent-management.

It is the contention of the learned counsel for the petitioner that the fact that the petitioner worked for more than 21 years with the respondent-management is not in dispute. Once this is accepted, there was no other option for respondents 2 and 3 except to strictly follow the statutory provisions under Section 25-F of the Act before the services of the petitioner were terminated. On this ground alone, the Labour Court ought to have answered the claim in favour of the petitioner and ought to have directed his reinstatement, continuity of service and payment of all attendant benefits and also full back wages.

Learned counsel for the respondents 2 and 3 contended that there was no employee and employer relationship between the petitioner and the 3rd respondent and the petitioner was working with the Students' Union all these years. Therefore, the Labour Court has rightly come to the conclusion that the claim petition has no merit and as such, dismissed the same.

I have gone through the Award passed by the Labour Court and each and every document marked before the Labour Court and the depositions recorded on behalf of the petitioner as well as the respondents and also the other material made available on record.

Before the Labour Court, the workman examined himself as W.W.1 and got marked Exs.W1 to W11 and on behalf of the management, M.Ws.1 and 2 were examined and documents Exs.M1 to M30 were marked.

It may be noticed that regarding the contention of the learned counsel for the respondent-Rangaraya Medical College that the claim petition was not maintainable, the Labour Court came to the conclusion that the claim petition filed by the petitioner is maintainable, since the hostel was being run for the benefit of the students and the workers are appointed to work at the hostel. Rather, the Labour Court stated that there was employer and employee relationship between the respondent-management and the petitioner. This finding of the Labour Court attained finality and not challenged by the respondent-management.

It is not in dispute that the petitioner has been working as a Peon attached to the Men's Hostel of Rangaraya Medical College, Kakinada under the control of the Warden of the College. Even M.Ws.1 and 2 did not produce the attendance register as well as the acquittance roll to show that the petitioner was employed by the

students executive committee (mess). On the other hand, a vague suggestion was made to the workman when he asserted in his chief examination that he was appointed by the Principal and Warden; however, his appointment letter issued by them was lost in the cyclone of 1969 when his house collapsed, the Principal and the then Warden of the College Men's Hostel have no power to issue order of appointment. Further, when it was suggested to him, he denied that the appointing authority was the Students Executive Committee of the Hostel. He reasserted that the Principal and the Warden are the proper persons and in fact, the show cause notice was issued to him by the Warden asking him to explain as to why his services should not be terminated. Even in the evidence of M.Ws.1 and 2, nothing is stated that the petitioner was appointed by Students' Executive Committee and practically no evidence was placed before the Labour Court in that regard. The petitioner also asserted that he was being paid a salary of Rs.375/- per month after deducting provident fund etc. This fact is not controverted anywhere and it was not put to him in the cross-examination.

It is curious to note that the Labour Court having come to the conclusion that there is employer and employee relationship between the respondent and the petitioner, held that since the petitioner applied for leave and extended thereafter and there are no written orders of termination, the very petition under Section 10 of the Act is not maintainable and further held that unless and until the services of the petitioner are terminated, he is not entitled to file an application under Section 2-A(2) of the Act. Therefore, the claim petition was dismissed.

I am of the considered opinion that the Labour Court has committed an incurable error in holding that since there were no written orders of termination, the petitioner is not entitled for any relief and he cannot maintain the petition under Section 2A(2) of the Act and the petitioner could have settled his dispute under Section 10(1) of the Act.

Admittedly, this is a case where the petitioner worked for more than 21 years as a peon in the Men's Hostel of Rangaraya Medical College, Kakinada. There is no dispute as to this fact. It is also not in dispute that he applied for leave from 23-6-1988 to 25-6-1988 i.e. for three days and the same was sanctioned. Again, he applied for leave from 2-7-1988 to 4-7-1988 with permission to avail public holiday on 3-7-1988 and the same was also sanctioned. On 16-7-1988 he again applied for leave for half day and it was sanctioned, but it was noted that on 17-7-1988 he did

not attend the duty, though there was a general body meeting and he was asked to appear in person and explain. Further, he applied leave again continuously for ten days from 18-7-1988 to 27-7-1988. Thereafter also he applied for leave from 3-8-1988 to 6-8-1988 for a period of four days, which was sanctioned. Again the petitioner applied for leave on 2-9-1988 stating that he was not able to attend the duty for 5 days on health grounds and, therefore, his absence from 28-7-1988 to 1-8-1988 may be treated as leave and the same may be sanctioned. Again on 8-8-1988 he applied for leave for a period of 5 days on health grounds, but it was not sanctioned, since there was no leave to his credit. Without joining duty, he sent another application dated 17-8-1988 stating that he was not able to attend duty and, therefore, he may be sanctioned leave from 16-8-1988 to 31-8-1988. May be he also applied for leave likewise further. But, it is the case of the petitioner that he was not permitted to join duty. For dismissing the claim petition, the Labour Court gave only one reason i.e. since there was no termination order passed by the management, the question of invoking the provisions of Section 25F of the Act and violating the provisions of Section 25-F of the Act by the management does not arise. The findings of the Labour Court, in view of the ample evidence available on record, are perverse. As stated above, the finding as to relationship of employer and employee attained finality, since the management has not challenged the award passed by the Labour Court. Though a show cause notice was issued to the petitioner asking to explain as to why action should not be taken against him and also stating that in case he fails to submit explanation, his services would be terminated, no detailed enquiry was conducted. Once the misconduct of absenteeism is alleged, it is the bounden duty of the management to conduct a detailed enquiry into the matter and pass appropriate orders as per law. In this case, no such attempt was made. The petitioner was not permitted to join duty, may be orally. This itself shows that there was a termination of the services of the petitioner orally. The petitioner worked for more than 21 years; therefore, it must be deemed that the management has violated the statutory provisions of Section 25-F of the Act, since no notice was given or notice pay was paid in lieu of notice. Instead of remitting the matter to the Labour Court, since it is brought to my notice that the petitioner has already attained the age of superannuation long ago, I feel it appropriate to give a quietus to this litigation at this stage itself.

For all the above reasons, the impugned Award of the Labour Court is set aside and it is declared that the termination of the petitioner is arbitrary, illegal and violative of provisions of Section 25F of the Act. In the result, the petitioner-workman is entitled for reinstatement with continuity of service and full back wages for the period he was kept out of employment till the date of attaining the age of superannuation.

The Writ Petition is allowed to the extent indicated above. No order as to costs.

-4-2005

prk

The Rule nisi has been made absolute as above.

Witness the Hon'ble Sri Bilal Nazki, the Acting Chief Justice on this the Tuesday, Twelfth day of April Two thousand and Five.

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Presiding Officer, Labour Court,
Visakhapatnam District.
2 The Principal and Chief Warden, Rangaraya Medical College,
Kakinada, E.G.District
3 The Warden, Men's Hostel,
Rangaraya Medical College, Kakinada, E.G. District.

4 2 CCs to Govt.Pleader for Labour, High Court Buildings, Hyderabad (OUT)

5 CD copies

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